



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of

Applicant : Frank A. Scarpino, Arturo H. Garcia and Arturo J. Garcia
Serial No. : 09/887,606
Filing Date : June 22, 2001
Title : FREQUENCY RESPONSES, APPARATUS AND METHODS FOR
THE HARMONIC ENHANCEMENT OF AUDIO SIGNALS
Art Unit : 2644
Examiner : Michalski, Justin I.
Docket : TRD 021 IA

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria VA 22313-1450 on August 4, 2005.

Commissioner for Patents
PO Box 1450
Alexandria VA 22313-1450


Robert L. Showalter 33,579
Reg. No.

FURTHER SUBMISSION OF REQUEST TO
RESCIND NONPUBLICATION REQUEST

Sir:

Upon receiving an Office Action in the above-identified application, the image file wrapper for this application was reviewed. It was discovered that the PTO misplaced a "Request to Rescind Nonpublication Request" filed in this application via facsimile on January 9, 2002.

Applicants' representative, Robert L. Showalter, spoke with Ms. Joni Chang about the request in February of 2002. She referred him to CQ6 posted on the PTO website (copy enclosed).

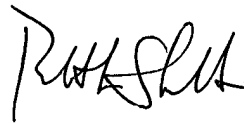
Enclosed is a further copy of the Request, as well as a receipt received from the PTO for that paper.

Serial No. 09/887,606
Docket No. TRD 021 IA
Page 2

Applicants request that the PTO indicate to applicants that the request to rescind the nonpublication request has been accepted by the PTO.

Respectfully submitted,

STEVENS & SHOWALTER LLP

A handwritten signature in black ink, appearing to read 'R. Showalter', written over a horizontal line.

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COPY

U.S.C. 122(b)(2)(B)(i)" (posted at <http://www.uspto.gov/web/forms/sb0035.pdf>) or make the request and certification in a similarly conspicuous manner when filing the patent application. If your application has been assigned a publication date within the next one to six months, you should consider filing a petition for express abandonment under 37 CFR 1.138(c). If your application has been assigned a publication date within the next four weeks, then it is too late to avoid publication of the application. See Changes to Implement Eighteen-Month Publication of Patent Applications, Final Rule, 65 Fed. Reg. 57024, 57034, Sep. 20, 2000, **1239 Off. Gaz. Pat. Office 63, 73 (October 10, 2000)**. Applicant would have a similar remedy in other situations where the request is not conspicuous, for example, where the request is in the specification of the application, on a fee transmittal sheet, or buried in the transmittal letter.

CQ5. I filed a nonpublication request with the application on filing, but the filing receipt shows a projected publication date. What should I do? (Posted on 6/27/01; renumbered from C34)

Contact the Customer Service Representative for the Technology Center where your application is assigned. They can have the application withdrawn from publication if your non-publication request is in the application file wrapper and is conspicuous. If they cannot find the nonpublication request, but you have a post card receipt showing that the nonpublication request was in fact filed, you should contact the Office of Patent Legal Administration at (703)308-6906.

★

New CQ6. I filed a nonpublication request and a certification under 35 U.S.C. 122(b)(2)(B)(i) using the USPTO form PTO/SB/35 at the time of filing the U.S. application. At that time, I did not believe that publication was necessary because the invention disclosed in the application was already published in a previously filed corresponding PCT application. Upon further review, however, I now believe that publication of the U.S. application is appropriate because the PCT application is an application under a multilateral international agreement that requires eighteen-month publication. (Posted on 10/4/01)

1. **Do I need to rescind the nonpublication request?**
2. **Is the U.S. application abandoned because the certification is improper?**
3. **Do I need to file a petition to revive the abandon application due to failure to notify the Office of the PCT application under 37 CFR 1.137(f)?**
4. **Is there anything I can do to correct the improper certification so that the validity or enforceability of any patent issuing from the U.S. application is not jeopardized?**



1. Yes. The request to rescind (USPTO form PTO/SB/36) should be filed promptly. Since the PCT application was filed prior to the filing of the U.S. application, the applicant or the representative should not have certified that the invention disclosed in the U.S. application **has not and will not be** the subject of an application filed in another country, or under a multilateral international agreement, that requires eighteen-month publication. See 35 U.S.C. 122(b)(2)(B)(i). The U.S. application is subject to publication under the eighteen-month publication provisions of AIPA.
2. The Office will not treat the U.S. application as abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii). The statute only provides for that an application is regarded as abandoned when the applicant fails to notify the Office within 45 days of a subsequently filed application that is directed to the same subject as the invention of the US application in another country, or under a multilateral international agreement, that requires eighteen-month publication. 35 U.S.C. 122(b)(2)(B)(iii) does not apply to the situation when the applicant made an improper certification subsequent to the foreign filing.
3. A petition to revive under 37 CFR 1.137(f) is inappropriate because the application is pending (unless the application is abandoned for other reasons). If a petition to revive under 37 CFR 1.137(f) is filed, the Office will dismiss the petition as inappropriate but retain the petition fee because the Office was required to evaluate the merits of the petition before being able to determine that the petition was not appropriate.
4. Applicants and their representatives should make sure that the certification is proper before signing and filing it with the Office. While applicants should rescind any improper certification as soon as possible, 35 U.S.C. 122(b)(2)(B)(i)-(iv) does not include any provision for "correction" of an improper certification. Any applicants or their representative, however, who makes a false statement (e.g., an improper certification) may be violating 37 CFR 10.18(b). In addition, such false statements by registered patent practitioners may also violate other Disciplinary Rules, 37 CFR 10.20-10.112.

CR. Notice of Publication

CR1. How will I know when my patent application has been published? (Posted on 6/27/01; updated on 10/17/01; renumbered from C25)

Applicant will be mailed a notice with the publication number and publication date. This notice is now being mailed on the publication date.

CR2. Will the Office mail a notice if the publication date is changed? (Posted on 6/27/01; renumbered from C26)



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FACSIMILE TRANSMISSION

TO:	Name:	Art Unit 2644	
	Company:	US Patent and Trademark Office	
	Fax No.:	703-872-9314	Phone No.:
FROM:	Name:	Robert L. Showalter	
	Date:	January 9, 2002	
	Our. Ref.:	TRD0211A; Serial No. 09/887,606	Trans. No.:
# Pages (incl. cover): 3			

REMARKS:

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Request to Rescind Nonpublication Request

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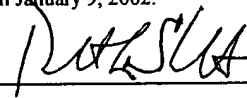
THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of

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Title : FREQUENCY RESPONSES, APPARATUS AND METHODS FOR THE
HARMONIC ENHANCEMENT OF AUDIO SIGNALS
Docket : TRD 021 IA
Art Unit : 2644

CERTIFICATE OF FACSIMILE TRANSMISSION

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on January 9, 2002.


Robert L. Showalter

Reg. No. 33,579

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

Request to Rescind Nonpublication Request

Concurrently with the filing of the above-identified application, applicants filed a Nonpublication Request under 35 U.S.C. 122(b)(2)(B)(i).

The subject application was filed as a continuation-in-part of International Application No. PCT/US00/21912. The international application was published on 22 February 2001.

After recently reviewing the subject application as well as the International application, applicants and their counsel believe that the nonpublication request may have been filed in error. Applicants further submit that any delay in filing this request to rescind the nonpublication request was unintentional.

Accordingly, in an abundance of caution, applicants request that the nonpublication request previously filed in patent application U.S. Serial No. 09/887,606 be rescinded.

Applicants further request that the Office indicate to applicants prior to February 8, 2002 whether the request to rescind the nonpublication request has been accepted by the Office and further that the case will not be considered abandoned in view of 37 CFR § 1.213(c). It is submitted that 37 CFR § 1.213(c) applies only when an applicant "subsequently files an application directed to the invention *** in another country, or under a multilateral international agreement."

Respectfully submitted,

STEVENS & SHOWALTER, L.L.P.

A handwritten signature in black ink, appearing to read 'R. Showalter', is written over the firm name.

Robert L. Showalter
Registration No. 33,579

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TO:

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Cover
Page

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01/09/2002 10:23 937-438-2124

STEVENS & SHOWALTER

PAGE 01/03

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FACSIMILE TRANSMISSION

Name:	Art Unit 2644		
TO:	Company:	US Patent and Trademark Office	
	Fax No.:	703-872-9314	Phone No.:
FROM:	Name:	Robert L. Showalter	
	Date:	January 9, 2002	
	Our Ref.:	TR00211A; Serial No. 09/887,606	Trans. No.:
# Pages (incl. cover): 3			

REMARKS:

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Request to Rescind Nonpublication Request

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

9

Application Number

09/887,606

Filing Date

06/22/2001

First Named Inventor

Frank A. Scarpino

Art Unit

2644

Examiner Name

Michalski, Justin I.

Attorney Docket Number

TRD 021 IA

ENCLOSURES (Check all that apply)

☐

Fee Transmittal Form

☐

Fee Attached

☐

Amendment/Reply

☐

After Final

☐

Affidavits/declaration(s)

☐

Extension of Time Request

☐

Express Abandonment Request

☐

Information Disclosure Statement

☐

Certified Copy of Priority Document(s)

☐

Reply to Missing Parts/
Incomplete Application

☐

Reply to Missing Parts
under 37 CFR 1.52 or 1.53

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Drawing(s)

☐

Licensing-related Papers

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Petition

☐

Petition to Convert to a
Provisional Application

☐

Power of Attorney, Revocation

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Change of Correspondence Address

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Request for Refund

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After Allowance Communication to TC

☐

Appeal Communication to Board
of Appeals and Interferences

☐

Appeal Communication to TC
(Appeal Notice, Brief, Reply Brief)

☐

Proprietary Information

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Status Letter

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Other Enclosure(s) (please identify
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Further Submission of Request to Rescind
Nonpublication Request; and
Return Receipt Postcard

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Stevens & Showalter LLP

Signature

Printed name

Robert L. Showalter

Date

August 4, 2005

Reg. No.

33,579

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Typed or printed name

Robert L. Showalter

Date

August 4, 2005

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